

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(December 3, 1997 Session)

FILED
March 5, 1998
Cecil W. Crowson
Appellate Court Clerk

BERYL JACK,) CLAIMS COMMISSION
)
Plaintiff-Appellant,) Hon. William Robert Baker,
) Commissioner.
v.)
) No. 01S01-9706-BC-00136
STATE OF TENNESSEE,)
)
Defendant-Appellee.)

For Appellant:

Larry R. Williams
Nashville, Tennessee

For Appellee:

John Knox Walkup
Attorney General & Reporter

Michael E. Moore
Solicitor General

Heather C. Ross
Assistant Attorney General
Nashville, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Associate Justice, Supreme Court
William H. Inman, Senior Judge
Joe C. Loser, Jr., Special Judge

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Loser, Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employee contends the evidence preponderates against the commissioner's finding that her claim is barred because of a false statement contained in her employment application. The panel has concluded the judgment should be affirmed.

The claimant has been a certified nursing technician since 1973. She began working for Bethany Health Care, a nursing home, in May of 1990 and soon thereafter injured her back while lifting a patient. As a result of that injury, she received two laminectomies at L5-S1. Following those surgeries, she had difficulty standing, bending and sitting for long periods of time. The operating surgeon imposed lifting and bending restrictions. She was awarded permanent partial disability benefits and applied for social security disability benefits. She was terminated from Bethany because that employer did not have work for her within her limitations.

On October 10, 1991, she made written application for employment at Middle Tennessee Mental Health Institute. On that application, she was asked, "Do you have a limiting disability or handicap?" She responded, "No." In response to a question as to her reason for leaving Bethany, she wrote, "Illness in the family." On another document, she denied having any "history of physical defects."

On the strength of that application, she was approved for employment by the state. We find in the record no evidence that the employer had any knowledge of her pre-existing disability. It is equally clear in the record that she could not have been employed as she was if the above questions had been accurately answered.

The commissioner denied compensation benefits because of the false application. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. section 50-6-225(e)(2). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996).

A false statement in an employee's application for employment will bar recovery of workers' compensation benefits if all three of the following elements exist: first, the employee must have knowingly and willfully made a false representation as to his physical condition; second, the employer must have relied upon the false representation and such reliance must have been a substantial factor in the hiring; and third, there must have been a causal connection between the false representation and the injury. Federal Copper and Aluminum Company v. Dickey, 493 S.W.2d 463 (Tenn. 1973). The causal

connection required is a factual showing that the injury upon which the claim is based is causally related to the employee's prior injury or physical condition which was wrongfully concealed from the employer. Daniels v. Gudis Furniture Co., 541 S.W.2d 941 (Tenn. 1996).

From a deliberate consideration of the record, the panel finds the evidence to be virtually undisputed that the statements made by the claimant were false, that the employer relied on the false statements and such reliance was a substantial factor in the hiring, and that there was a causal connection between the false representation and the injury. The claimant testified at trial and maintains in this appeal, however, that she did not know her statements were false and that they were not, therefore, willfully false. Thus, this appeal turns on her credibility.

The commissioner had the opportunity to and did observe the claimant during the trial, including her live testimony. In order to overturn his material, this tribunal would have to ignore that finding and find something in the record to corroborate her testimony that she did not know of her limitations. The evidence does not support such a finding. Under the circumstances, we must defer to the commissioner and affirm his finding.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the plaintiff-appellant.

Joe C. Loser, Jr., Special Judge

CONCUR:

Lyle Reid, Associate Justice

William H. Inman, Senior Judge

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<i>BERYL JACK,</i>	}	<i>TN. CLAIMS COMMISSION</i>
	}	<i>No. 204684 Below</i>
<i>Plaintiff/Appellant</i>	}	
	}	<i>Hon. William Robert Baker,</i>
<i>vs.</i>	}	<i>Commissioner</i>
	}	
<i>STATE OF TENNESSEE</i>	}	<i>No. 01S01-9706-BC-00136</i>
	}	
<i>Defendant/Appellee</i>	}	<i>AFFIRMED.</i>

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on March 5, 1998.

PER CURIAM